

**MICHIGAN PROCESS SERVERS' ALLIANCE**

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**STATEMENT OF PATRICK M. CLAWSON  
LEGISLATIVE & MEDIA AFFAIRS DIRECTOR**

The Michigan Process Servers' Alliance objects to SB-1092 in its present form that would eliminate the requirement for personal service of judgment liens in excess of \$25,000. We oppose any efforts to compromise the integrity of the civil justice system and due process so that large financial institutions can shave a few dollars off of their transaction costs.

We believe that eliminating personal service is a discredit to the American legal tradition of due process. The right to be notified of a legal proceeding and be heard is at the core of American jurisprudence. Personal service of civil process is necessary so defendants are fully aware of legal proceedings that may deprive them of money, property and economic liberty and have the opportunity to defend against any claim.

Our organization believes that post-judgment collection and enforcement actions should be subject to the same standards of due process as used in any other part of the litigation process. Process servers know from experience that many opportunities for corruption of due process and defendants' rights occur at this state of litigation process.

While most Michigan attorneys seek to operate in a professional and ethical manner when litigation debt collection cases, we are aware that a significant number of Michigan attorneys are known to aggressively bend the rules and ride roughshod over defendants in their zeal to obtain judgments for and collect on them. For instance, some attorneys in Michigan demand that process servers file affidavits with courts that they were unsuccessful in serving defendants so the court will issue orders for "nail and mail" alternate service of process at a particular address, even when the attorneys and process servers are aware the address is a vacant house and the defendant has long since moved on. Michigan's judiciary has, for reasons unknown, been reluctant to adopt forms or procedures that would require litigants to provide substantial proof that a defendant lives at a particular address before ordering alternate service.

This bill would eliminate personal service of judgment liens in favor of service via first-class mail. Process servers know from daily, first-hand experience that first-class mail is not a reliable means of service of process. Defendants, especially those who are financially-troubled, are very mobile. They move frequently and often fail to notify postal authorities of their new addresses. Sometimes this failure to update is unintentional, a simple error. Sometimes it is deliberate by individuals who are stressed by financial troubles and who seek to disappear and buy some time to deal with their problems. Often it is an intentional act by professional deadbeats who seek to defeat accountability for their financial obligations to creditors. Every process server knows that although the Post Office can deliver a letter addressed to a person at a particular address, that is not proof that the person actually received the letter or even lives at the delivery address.

We believe the Senate Judiciary Committee should require personal service of all judgment liens, including those under \$25,000. Further, we believe the present statute needs to be amended to permit the courts to order service of judgment liens through alternate methods, such as posting and publication, when defendants are clearly evading service of process. Michigan law does not presently include language authorizing the courts to order alternate service of judgments liens.

The bill would authorize a Sheriff or other officer to do postings prior to a foreclosure pursuant to a judgment lien. We believe that any process server, not just a Sheriff or Court Officer, should be authorized to do these postings in public places. Restricting the personnel who authorized to do postings is an anachronistic practice that no longer reflects current market practices. In many other states, process servers are authorized by law to do these postings and many sheriff's departments welcome this because it allows them to use their uniformed officers for public crime-fighting efforts rather than private debt-collection activities.

We also believe that great caution is needed for another reason. The proposed legislation makes it much easier for judgment creditors to foreclose on debtors – and that includes foreclosing on the houses and residences of debtors. In light of the recent national scandals involving improper foreclosures by financial institutions, and the actions by several state Attorneys General, including Michigan's, to rein in that misconduct, we believe safeguards need to be put into place to avoid abusive foreclosures that may be executed by enforcing judgment liens. We know that many attorneys already use judgment liens prior to execution just to see if they can get paid more quickly.

This legislation also raises several questions. Does foreclosing on a judgment lien supersede an execution order or a levy on real estate? Will creditors no longer have to seize personal property first to satisfy court judgments? Why is there no redemption period? What is the liability risk for Sheriffs who allow foreclosure on property when they lack personal knowledge if the defendant has been personally notified or if in fact the defendant never received notice.

The Michigan Process Servers' Alliance respectfully requests that the Senate Judiciary Committee subject this proposed legislation to much more study before any further action is taken. We believe the potential negative consequences to public confidence in Michigan's justice system created by this bill far outweigh any beneficial effects at this time.

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The Michigan Process Servers' Alliance was founded in March 2012 by a group of Michigan Process Servers dedicated to professionalizing their field and preserving the dignity of personal service. Our group is dedicated to benefiting its members with educational and promotional opportunities as well as providing camaraderie in a competitive business. Our Alliance is proactive in seeking members who share the ideals that personal service will prevail in a technology driven world in which time is of the essence. It also strives to promote those within the business who follow the state statutory fee structure and those who have professional reputations with their courts and clients. Many of our members, while process servers, are also business owners. Several members have firms that service several areas within the state of Michigan. Most of these firms are not only comprised of dedicated process servers, but also Court Officers and Deputy Sheriffs that can service all Court Orders (i.e. Writs of Seizure, Writs of Restitution, and Bench Warrants).

Dear Senator,

In regards to Senate Bill No. 1092

It is my understanding that there is a hearing set for tomorrow May 1, 2012. I would like to bring your attention to some concerns I have with this bill. Being a Court Officer for 25 year, I am well versed in Civil Law, and have found this bill to be very egregious and degrading in regards to civil law and due process. I am writing so that you are informed prior to the decision making process. I just want you to be aware of the concerns prior to your vote.

Sec. 2805 parts 3 and 4. The removal of personal service. Prior to judgment personal service is instrumental in even getting a case heard in the court of law. If you can not provide proof of service the case is thrown out. In post judgment matters we feel that creditors and their attorney's need to be held to this same standard. It is very important that you realize personal service IS important in post judgment remedies as well. Going out on a Writ of Garnishment or Seizure of property, it is important that the first time around they were personally served. It is very hard to explain to a defendant why he or she must pay something when you find they weren't properly informed the first time around. This is already a problem with our current justice system. Personal service and Motion for alternate service are abused every day, and defendants go without notice. I foresee such corruption with this as well. Strictly limiting them to serve notice by first class mail is degrading. Especially if we award them the right to foreclose on peoples homes within this same bill.

Which brings me to Sec. 2819. Allowing on foreclosure of property. There are several concerns with this portion of the bill. If the sheriff's departments are going to be handling these sales then it is the sheriff or another officer of that county, like a Court Officer, that should be the ones preparing the postings and making sure they get posted. They are the ones that are later going to be attesting that the sale was held properly. Also, there is no mention of a redemption period. The officer is to prepare and sign a sheriff's deed within 10 days. It is outrageous to ask a sheriff or an officer to sign this deed with no knowledge of if the defendant has been properly notified, lack of personal service, or if the foreclosure sale was done properly, lack of posting personally. There is just too much liability for the one holding the sale.

We are afraid that this bill will lead to continued abuse by the judgment holders. There is already a few processes for levy and sale of Real Estate in place, although a little more time consuming and cumbersome, they are more directive and fair for those involved. I do not feel this has been thought out that well, and has many holes. It leads to bastardized interpretations and several questions unanswered.

Please just keep this in mind when discussing this bill. Thank you for your time.

Respectfully Submitted,  
David Grizzel- Court Officer